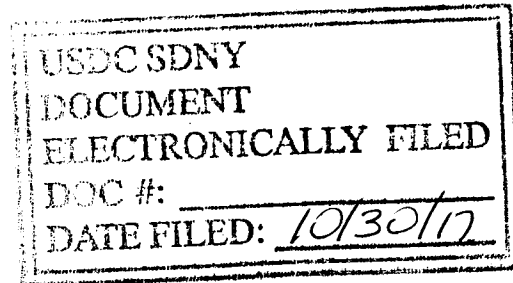


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----X

GERALDO MENA,

:

Plaintiff,

:

15 Civ. 3707 (ALC) (HBP)

-against-

:

REPORT AND  
RECOMMENDATION

THE CITY OF NEW YORK, et al.,

:

Defendants.

:

-----X

PITMAN, United States Magistrate Judge:

TO THE HONORABLE ANDREW L. CARTER, United States  
District Judge,

Your Honor referred this matter to me on August 8, 2017 for general pretrial supervision. Pursuant to the Order of reference, I scheduled an initial pretrial conference for September 28, 2017; notice of the conference was provided to all counsel through a minute entry on the Court's ECF system.

Although counsel for defendants timely appeared for the September 28 conference, plaintiff's counsel failed to appear. Efforts to contact plaintiff's counsel concerning his absence were fruitless; there was no answer at his telephone number and his voicemail box was full. Plaintiff's counsel has never contacted the Court to explain his absence.

Plaintiff's counsel's absence from the September 28 conference was the second time that he inexplicably failed to appear for a conference. On October 25, 2016, plaintiff's counsel failed to appear for conference scheduled before your Honor.

In an effort to determine whether plaintiff still had an interest in prosecuting this action, I issued an Order to plaintiff's counsel on October 5, 2017, directing him to show cause by October 26, 2017 why the action should not be dismissed as abandoned. My October 5 Order provided, in pertinent part:

Given plaintiff's counsel's repeated failure to appear [for conferences], there is reason to believe that plaintiff has abandoned this action. Accordingly, it is hereby ORDERED that

No later than October 26, 2017, plaintiff is ORDERED to show cause in writing why this action should not be dismissed with prejudice for failure to prosecute. **A failure to respond in a timely manner will result in the issuance of a Report and Recommendation recommending the dismissal of this action.**

(emphasis in original). Plaintiff's counsel has not responded to my October 5 Order in any way.

Given plaintiff's counsel's repeated absences from court conferences, his failure to communicate with the Court and his failure to respond to my October 5, 2017 Order to Show Cause, I respectfully recommend that the action be dismissed without prejudice for failure to prosecute.

## **OBJECTIONS**

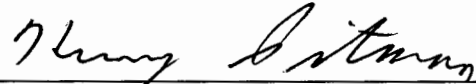
Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from receipt of this Report to file written objections. See also Fed.R.Civ.P. 6(a). Such objections (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the Chambers of the Honorable Andrew L. Carter, United States District Judge, 40 Centre Street, Room 435, New York, New York 10007, and to the Chambers of the undersigned, 500 Pearl Street, Room 1670, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Carter. FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS **WILL** RESULT IN A WAIVER OF OBJECTIONS AND **WILL** PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140, 155 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir.

1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 57-59 (2d Cir.

1988); McCarthy v. Manson, 714 F.2d 234, 237-238 (2d Cir. 1983).

Dated: New York, New York  
October 30, 2017

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Henry Pitman", written over a horizontal line.

HENRY PITMAN

United States Magistrate Judge

Copies mailed to:

All Counsel